

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 93-0766 CS
Controlled Substance Excise Tax
For The Tax Periods: 1993**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Controlled Substance Excise Tax - Possession

Authority: IC 6-7-3-5

The taxpayer protests assessment of controlled substance excise tax.

II. Tax Administration - Interest

Authority: IC 6-8.1-10-1.

The Taxpayer protests assessed interest.

III. Tax Administration - Penalty

Authority: IC 6-7-3-11.

The Taxpayer protests assessed penalty.

STATEMENT OF FACTS

Taxpayer sold methamphetamine on October 12, 1992 and on October 20 and 21, 1992. The Department issued a jeopardy assessment for Controlled Substance Excise Tax (CSET) on July 20, 1993 against the taxpayer based on the taxpayer's delivery and possession of a controlled substance.

Additional facts will be provided as necessary.

I. Controlled Substance Excise Tax - Possession

DISCUSSION

Indiana Code 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered,
- (2) possessed; or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

Taxpayer argues that the he was wrongfully accused of possessing and delivering a controlled substance by someone who was a convicted felon. Taxpayer argues that because the criminal charges against him were dropped, the CSET assessment should not apply to him. Taxpayer argues that he was not dealing, delivering, or possessing a controlled substance at the time of his arrest.

Despite the taxpayer's arguments that he did not possess or deliver a controlled substance during the assessed period, taxpayer did not submit any information to rebut the presumption that he did in fact possess and deliver controlled substances in October of 1992. Pursuant to the information contained in the file, the Department finds that taxpayer sold controlled substances to police. Taxpayer is liable for CSET on the amount of controlled substances possessed and delivered.

FINDING

The taxpayer's protest is denied.

II. Tax Administration - Interest

DISCUSSION

The taxpayer protests the imposition of interest on its assessment. Indiana Code 6-8.1-10-1 states in pertinent part:

(a) If a person. . . incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment,

(e) Except as provided by IC 6-8.1-5-2(e)(2), the department may not waive the interest imposed under this section.

Therefore, the Department may not legally waive the interest.

FINDING

The taxpayer's protest of interest is denied.

III. Tax Administration – Penalty

DISCUSSION

The taxpayer protests the assessed 100% penalty. Indiana Code 6-7-3-11 states in pertinent part, “A person who fails or refuses to pay the tax imposed by this chapter is subject to a penalty of one hundred percent (100%) of the tax in addition to the tax.”

FINDING

The taxpayer's protest to penalty is denied.